

No.

**24-5165**

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

**FILED**

JUL 22 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**LEONARD W. HOUSTON, as Beneficiary  
of Estate of Louis Houston, Sr., Deceased**

— PETITIONER

(Your Name)

**HIGHLAND CARE CENTER, INC.,  
Skilled Nursing Home**

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

**LEONARD W. HOUSTON**

(Your Name)

**148 DEER COURT DRIVE**

(Address)

**MIDDLETOWN, NEW YORK 10940-6867**

(City, State, Zip Code)

**(845) 343-8923**

(Phone Number)

## QUESTION(S) PRESENTED

---

The filing a lawsuit in federal court, the Plaintiff, Lonard W. Houston, as Beneficiary of the Estate of Louis Houston, Sr., Decedent, is required to pay certain filing fees. The Court has the authority to allow his case to proceed without the prepayment of fees "by a person who affirms by affidavit that he or she is unable to pay costs. (28 U.S.C. §1915(a)(1). The Plaintiff Leonard W. Houston, Beneficiary of the Estate of Louis Houston, Sr. Decedent, has filed this affidavit along with a request and Motion for Leave to Proceed *in Forma Pauperis* (See Fed. R. Civ. P. 24) Thus, the purpose of the "federal *in forma* statute. . . is designed to ensure that indigent litigants have meaningful access to federal court." *Neitzke v. Williams*, 490 U.S. 319, 324,109 S. Ct 1827, 1831 (1989).

The lower Court has not permitted the Plaintiff-Appellant, *pro se* to proceed with this entitled action *in forma pauperis* and thus, subject to said "**Motion Statement**" with the attached "Exhibits" in support thereof. to screening under 28 U.S.C. §28 U.S.C. §1915 (e), when events not contemplated by the moving parties herein, render enforcement of the judgment "inequitable" as apparent in this case under the Civil Rights Act (42 U.S.C. §1983), as amended. and the adapted federal law and regulation – "**Resident rights**" (42 C.F.R. §483.10, et seq.)

The sole question herein presented for review as to the erroneously and improperly dismissal of the Appellant-Plaintiff's *pro se* case under 28 U.S.C. § 28 U.S.C. §1915 (e) (2)(B) –

Whether the underlying claims of the Plaintiff-Appellant, *pro se* of dismissal of its Motion Statement of the facts lacks merit and/or similarly deficient. Which the lower Court, upon said Appellant, *pro se* moved for leave to proceed *in forma pauperis*, and thus, Ordered that the motion is **DENIED**, and the appeal is **DISMISSED**, because it "lacks an arguable basis either in law or in fact." (citing, *see* 28 U.S.C. §1915(e) (2) (B)?

## TABLE OF CONTENTS

	Page(s)
<b>TABLE OF CONTENTS.</b> .....	i
<b>TABLE OF AUTHORITIES, STATUES &amp; RULES</b> .....	iii
<b>PRELIMINARY STATEMENT</b> .....	1
<b>STATEMENT OF THE CASE</b> .....	2
<b>REASONS FOR GRANTING THE PETITION</b> .....	8
<b>CONCLUSION</b> .....	23
<b>PROOF OF SERVICE</b> .....	24
<b>ATTACHMENT:</b>	
<b>Highland Health Care Center – RESIDENT'S' BILL OF RIGHTS –</b> <b>NURSING HOMES AND HEALTH RELATED FACILITIES</b> <b>(Part of Resident's Medical Chart and Employee's Personal File</b> <b>and Appointed Personal Representative – LEONARD W. HOUSTON, SON,</b> <b>dated, April 23, 1997</b> .....	<b>Att.-1</b>
<b>Highland Care Center, Inc. – DESIGNATED REPRESENTATIVE</b> <b>LOIUIS HOUSTON SR., Resident appointed LEONARD W. HOUSTON,</b> <b>Attorney-in-Fact, residing at 148 Deer Court, Middletown, NY 10940, as</b> <b>Designated Representative, dated, April 23, 1997/w Medical Diagnosis, etc.</b> .....	<b>Att-2</b>
<b>Long Term Care Facilities and Home Health Agencies – (42 C.F.R. Parts 483 &amp; 484)</b> <b>PART 483 – CONDITIONS OF PARTICIPATION AND REQUIREMENTS</b> <b>FOR LONG TERM CARE FACILITIES (§ 483.10 Resident rights (item 7)</b> .....	<b>Att.3</b>
<b>INDEX TO APPENDICES</b>	

## TABLE OF AUTHORITIES, STATUES & RULES

	Page No.
<b>Cases</b>	
<i>Houston, et al., v. Highland Care Center, Inc.</i>	
Docket No. 99-cv-02047 (EHN-RLM) .....	4
Docket No. 1:23-cv-8186 (AMD(LB)) .....	3,6
Docket/Case No. 22-2692cv (Second Cir. May 2, 2023) .....	5
Docket/Case No. 23-5084 (US, Justice Sotomayer, Oct. 2, 2023) .....	5
<b><i>United States</i></b>	
<hr style="width: 100%; border: 0; border-top: 1px solid black; margin: 10px 0;"/>	
<b>UNITED STATES CONSTITUTION</b>	
<b>Amend.</b>	
14 <sup>th</sup> .....	13
<b><i>Federal Statues</i></b>	
<hr style="width: 100%; border: 0; border-top: 1px solid black; margin: 10px 0;"/>	
<b>UNITED STATES CODE</b>	
<b>28 U.S.C. - Judiciary and Judicial Procedure</b>	
<b>Sec.</b>	
1915(e) (e)(2)(B)(ii) .....	3,6
<b>42 U.S.C. - Social Security Act</b>	
<b>Sec.</b>	
401 .....	13
1320a-7b(d) .....	
1369r(6) .....	15
1395i-3(a)(h) .....	4
1395i-3(c)(6) .....	15
1395i-3(d) .....	19,21
1395x(j) .....	17,20
1396 .....	9
1396a (10) .....	11
1396d(a)(4)(A) .....	11
1396p(a) .....	12
1396r .....	4,11,13,14
1396r(a)-(h) .....	4
1396r(d) .....	19
1864(a) .....	17
1902(a)(33)(B) .....	17
<b>42 U.S.C. - Civil Rights Act</b>	
<b>Sec.</b>	
1983 .....	2,7,13,16

*Other*

**THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987 ("OBRA-87")**  
[Subtitle C- Nursing Home Reform]

<b>Tit.</b>	
42 U.S.C. §1320a-7b(d) .....	10
42 U.S.C. §1395i-3(a)(h) .....	10
42 U.S.C. §1351-3(c)(5)(A)(ii) .....	10
42 U.S.C. § 1396r(a)-(h) .....	2,4,10
42 U.S.C. §1396r .....	21

**LONG TERM CARE FACILITIES AND HOME HEALTH AGENCIES**  
**PART 483 – CONDITIONS OF PARTICIPATION AND**  
**REQUIREMENTS FOR LONG TERM CARE**

42 C.F.R. Part 483 .....	2
42 C.F.R. § 483.10 .....	2

*State Statutes*

**NY PUBLIC HEALTH LAW, ARTICLE 28**

<b>Sec.</b>	
2803-c .....	1,14
2803-c(d) .....	15
2803c(3)a-h .....	13.
2803-d .....	1,3,8

**NY SOCIAL SERVICES LAW, ARTICLE 5**

<b>Sec.</b>	
131-o(b) .....	11,12
131-01(b) .....	12,13
1378-137a .....	13

**NY SURROGATE'S COURT PROCEDURE ACT, ARTICLE 13**

**SCPA**

**Sec.**

1306 .....	2,4,7
------------	-------

## NY CODE OF RULES AND REGULATIONS

### NYCRR

#### Sec. 10

415.3 ..... 14

#### Sec. 18

360-4.9n(a)(1) ..... 5

### *Rules*

---

## CERTIFIED FEDERAL REGULATIONS

### C.F.R. 42

§ 409.31 (a) .....	1,3
§ 435.831 .....	5
§ 435.1007 .....	5
§ 440.150 .....	14
§ 483 .....	2,7,19,21
§ 483 (a)-(c) .....	16,19
§483.25 .....	14
§483.10 .....	8
§ 483.12(d)(2) .....	10
§ 483.25 .....	2,7
§ 484 .....	19

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## **JURISDICTION**

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 12, 2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## PRELIMINARY STATEMENT

Plaintiff, LEONARD W. HOUSTON, as sole Beneficiary of Estate of Louis Houston, Sr., Deceased, *pro se*, and hereby complaining of Defendant, HIGHLAND CARE CENTER, INC., as a licensed Skilled Nursing Home, for declaratory relief of estate property interest in its previous filed entitled "Claim" for financial compensation damages of nursing home financial abuse and neglect, *etc.*, which herein constitutes a "special circumstance" that conferred the decedent's estate beneficiary notwithstanding to seek redress on the behalf of estate, now pursuant to such action against the named Defendant, as hereafter more fully set forth, respectfully alleges as follows

(Public Health Law (PHL) § 2803-d):

---

<sup>1</sup> A skilled nursing facility is defined by Medicare as one that is staffed and equipped to furnish skilled nursing and rehabilitative care. 42 C.F.R. § 409.31 (a). The rehabilitation services must be "reasonable and medically necessary" in accordance with HCFA Ruling 85-2 (Medicare/Medicaid Guide (CCH), 1986-<sup>1</sup> Transfer Binder Paragraph 34,817.

<sup>2</sup> **Nursing Homes and Health Related Facilities – RESIDENT'S RIGHTS**  
(Pub. Health L. § 2803-c), the patients' and residents' rights, policies and procedures shall ensure, at least, each patient and resident admitted to the facility:

**State Hospital Code Sections 730.17 and 740.14:**

**730.17 Patients' rights:**

(a)(9) may manage his personal financial affairs, or be given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with State law. (See Att-1)

## STATEMENT OF THE CASE

9. This civil action was filed on April 13, 1999, brought pursuant to Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, Nursing Home Reform Amendments Act, as contained within the Omnibus Budget Reconciliation Act of 1987 (OBRA-87), and pursuant to title 42, Civil Rights Act, section 1983, in the United States District Court, Eastern District of New York, by the Voluntary Administrator pursuant to Article 13, of the Surrogate Court Procedure Act (SCPA), by LEONRD W. HOUSTON o/b/o Louis Houston, Sr., being than 79 years disable and father of said decedent, against the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") a "Skilled Nursing Home." And thus, sought to secure protection of and redress unlawful deprivation of property rights and "due process" of law, including compensation and damages, sustained as a resident/patient of said nursing facility since on or about April 21, 1997.

10. That Decedent, LOUIS HOUSTON, SR., has been a victim of continuous financial abuse and substandard care, being upon information and belief, attributed to solely by the wanton acts, and behavior of the Defendant, HIGHLAND CARE CENTER, INC, ("the Facility") as a licensed "Skilled Nursing Facility." And more specifically in violation of applicable federal and state statutes pertaining to Nursing Home Standards under the Medicare and Medicaid's regulations and procedures, as to requirements for, and assuring quality of care in said skilled nursing facilities, now principally complained thereof by LEONARD W. HOUSTON, sole Beneficiary of Estate of Louis Houston, Sr., the decedent in these statutory proceedings, including, but not limited to *inter alia*, violations of Article 28 of the Public Health Law (PHL) of the State of New York.

(See Attachment1 - Att - 1: Long Term Care Facilities and Home Health Agencies (42 C.F.R. Parts 483 & 484); Att - 2: Resident's Bill of Rights - Nursing Homes and Health Related Facilities, and Att - 3: Designated Representative- Leonard W. Houston.

Further, said statement was amplified by the lower Court (U.S. District Court, Eastern District of New York Case 1:23-cv-8186 (AMD(LB) in its filed **Memorandum Decision and Order**, dated January 26, 2024, with respects, entitled, "**Pro-Se Claims on Behalf of the Estate**," rebuttal to the Plaintiff-Appellant's complaint filed *in forma pauperis* pursuant to 28 U.S.C. § 1915 (e) (2)(B)(ii), which cited among other things, in its rebuttal, "therefore *in forma pauperis* status is denied for the purpose of any appeal." (citation omitted).

It is the contention of said Plaintiff-Appellant, as Beneficiary of Estate of Louis Hjouston, Sr., Deceased, pro-se, complaining of Defendant, HIIGHLAND CARE CENTER, INC., as a licensed Skilled Nursing Home, for declaratory relief of estate property interest in its previous filed "Claim" for financial compensation damages of nursing home financial abuse and neglect, etc., which herein constitutes a "**special circumstance**" that conferred said decedent's estates beneficiary with standing to seek redress on the behalf of estate, pursuant to such action herein against the above-named Defendant, as been more fully set forth in its complaint,

(Public Health Law (PHL) § 2803-d)

---

1. A skilled nursing facility is defined by Medicare as one that is staffed and equipped to furnish skilled nursing and rehabilitative care. 42 C.F.R. §409.31 (a). The Rehabilitation services must be "reasonable and medically necessary" in accordance with HCFA Ruling 85-2 (Medicare/Medicaid Guide (CCH), 19861 Transfer Binder 34,817

**2. Nursing Homes and Health Related Facilities – RESIDENT'S RIGHTS**  
(Pub. Health L. §2803-c), the patients' and residents' rights, policies and procedures shall ensure, ta least, each patient and resident admitted to the facility:

**State Hospital Codes Sections 730.17 and 740.14:**  
**730.17 Patients' rights:**

(a)(9) may manage his personal financial affairs, or be given at least a quarterly accounting of financial transactions made on its behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with State law. (See Att-1)

## EXHAUSTION OF ADMINISTRATIVE REMEDIES

5. Plaintiff, LEONARD W. HOUSTON, as sole Beneficiary of the Estate of Louis Houston, Sr., decedent, who died [*Intestate*] on January 19, 2000, who sought damages caused by neglect and mistreatment, after his death, *etc.*, as Voluntary Administrator, pursuant to Article 13, of the Surrogate's Court Procedure Act (SCP) of the State of New York, and subsequent litigation submitted on its behalf in federal court (Eastern District of New York, Case No.: 99-cv-02047-EHN-RLM) under Fed. R. Civ. P. 60(b)(6) from a judgment, as extraordinary circumstances exist that demonstrate the judgment is manifestly unjust, under equitable consideration for said plaintiff on his behalf, to received ruling on the merits of its claim that was denied pursuant to an ORDER, entered on October 4, 2022., against the Defendant, HIGHLAND CARE CENTER, INC., for violations under the Nursing Home Reform Amendments Act, as contained there within the Omnibus Budget Reconciliation Act of 1987 ("OBRA-87") 101 Stat. 1330; 42 U.S.C. § 395i-3(a)-(h) and § 1396r(a)-h).

6. Now, as the sole Beneficiary of the Estate of Louis Houston, Sr., hereby suing on behalf of the estate, that "special circumstances" exist under the aforesaid circumstances, being the only party to protect the estate's interest in its filed claim, dated, **April 13, 1999**, under the aforesaid federal case filed therein the United States District Court Eastern District of New York (Cv-99-2047(EHN)), which subsequently was dismissed, upon the Voluntary Administrator's Motion submitted on behalf of Louis Houston, Sr., *pro-se*, *in forma pauperis* and Affidavit with Exhibits in support thereof.

7. The Plaintiff, LEONARD W. HOUSTON, as sole Beneficiary of Estate of Louis Houston, Sr. had notified the Defendant, HIGHLAND CARE CENTER, INC., ("the Facility") in writing of the afore said civil rights violation and their unlawful action of levy, execution and "*financial abuses*" of the Recipient's (being the Decedent, LOUIS HOUSTON, SR.) applied Income, the same, *i.e.*, more specifically, his "**Personal Needs Allowance**" in amount of \$50.00. [18 NYCRR § 360-4.9n(a)(1)]

8. Further, the Defendant, HIGHLAND CARE CENTER, INC., ("the Facility") upon information and belief, by its agents, employees, and those acting in consort has intentionally, maliciously and continued to ignore said civil rights violations, and has continued with its unlawful actions and conduct as aforesaid above, in the absence of failure to take and/or show any form or remedial concern pursuant to said complaint of Decedent, LOUIS HOUSTON SR., with respect to his permissible allowance and deductions in accordance with federal statutes (42 C.F.R. §§ 435.831, and 435.1007).

<sup>3</sup>

As Administrator of the Estate of LOUIS HOUSTON, SR, decedent, and upon receipt of an unfavorable ruling in the aforesaid lower courts, the same captioned –

LEONARD W. HOUSTON o/b/o Louis Houston Sr. pro se -against  
HIGHLAND CARE CENTER, INC.,  
United States District Court – EDNY (Brooklyn)  
Docket/Case No. 99-cv-02047 – AMD-RLM (Nov 1, 2022)  
Docket/Case No. 22-2672cv (Appeal - Second Circuit, May 2, 2023)

that was submitted for further federal court review in the Supreme Court of the United States, pursuant to "Petition For Writ of Certiorari To United States Court of Appeals for the Second Circuit, said petition for a writ of certiorari was denied without opinion; that Justice Sotomayor took no part in the consideration or decision of this filed petition. (Case No. 23-5084, dated October 2, 2023)

Further, said statement was amplified by the lower Court (U.S. District Court, Eastern District of New York Case l:23-cv-8186 (AMD/LB) in its filed **Memorandum Decision and Order**, dated January 26, 2024, with respects, entitled, "**Pro-Se Claims on Behalf of the Estate**," rebuttal to the Plaintiff-Appellant's complaint filed *in forma pauperis* pursuant to 28 U.S.C. § 1915 (e) (2)(B)(ii), which cited among other things, in its rebuttal, "therefore *in forma pauperis* status is denied for the purpose of any appeal." (citation omitted).

## STATEMENT OF THE CASE

9. This civil action was filed on April 13, 1999, brought pursuant to Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, Nursing Home Reform Amendments Act, as contained within the Omnibus Budget Reconciliation Act of 1987 9(BRA-87), and pursuant to title 421, Civil Rights Act, section 1983, in the United States District Court, Eastern District of New York, by the Voluntary Administrator pursuant to Article 13, of the Surrogate Court Procedure Act (SCPA), by LEONRD W. HOUSTON o/b/o Louis Houston, Sr., being than 79 years disable and father of said decedent, against the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") a "Skilled Nursing Home." And thus, sought to secure protection of and redress unlawful deprivation of property rights and "due process" of law, including compensation and damages, sustained as a resident/patient of said nursing facility since on or about April21, 1997.

10. That Decedent, LOUIS HOUSTON, SR., has been a victim of continuous financial abuse and substandard care, being upon information and belief, attributed to solely by the wanton acts, and behavior of the Defendant, HIGHLAND CARE CENTER, INC, ("the Facility") as a licensed "Skilled Nursing Facility." And more specifically in violation of applicable federal and state statutes pertaining to Nursing Home Standards under the Medicare and Medicaid's regulations and procedures, as to requirements for, and assuring quality of care in said skilled nursing facilities, now principally complained thereof by LEONARD W. HOUSTON, sole Beneficiary of Estate of Louis Houston, Sr., the decedent in these statutory proceedings, including, but not limited to *inter alia*, violations of Article 28 of the Public Health Law (PHL) of the State of New York.

*(See Attachment1 - Att - 1: Long Term Care Facilities and Home Health Agencies (42 C.F.R. Parts 483 & 484); Att - 2: Resident's Bill of Rights – Nursing Homes and Health Related Facilities, and Att - 3: Designated Representative- Leonard W. Houston.*

## REASONS FOR GRANTING THE PETITION

A Plaintiff has the right to proceed in civil action. However, if the administrator is the sole beneficiary and creditor of the estate, he/she may proceed *pro se* on the estate's behalf upon proceeding brought pursuant to, and relating to patient abuse, mistreatment, or neglect (Public Health Law § 230) and relating to the practice(s) of nursing home administration including violations of the Public Health Law (PHL)(Article 28- D, of the State of New York, and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. in this case of the "Beneficiary of the Estate of Louis Houston, Sr., decedent under the adopted federal law and regulation – 42 CFR §483.10 et seq.

---

As the Memorandum Decision by the lower court (U.S. District Court for the Eastern District of New York) and thereafter affirmed by the Second Court of Appeals in this case, pursuant to its reasons stated therein, is erroneous. But under the national importance as to abuse of patients care and denial of its rights thereof, the Supreme Court must decide the questions involved as aforesaid, being that others similarly situated, as were more specific allegations outlined in said submitted "Complaint" to the lower Courts with respect to Highland Care Center, Inc.'s negligence conduct and resident patients' treatment practices being a licensed "Skilled Nursing Facility." not in accordance with said federal law and regulations, as amended.

19. That the Admission Agreement of the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility"), which contained *inter alia*, a "Responsibility Party" provision is clearly in violation of the previously mentioned cited federal statutes.

20. That said agreement of the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") is void and unenforceable for at least five (5) reasons, namely:

1. can be used by a nursing facility to force a Resident's family member or friend into becoming a guarantor;
2. provides no consideration to a Resident, family member, or friend;
3. imposes unconscionable terms;
4. violates public policy; and
5. violates applicable consumer federal and state protections statutes.

21. The decedent, LOUIS HOUSTON, SR., is indigent, and that the Medicaid program makes and/or supplements the Resident's payment (i.e., that portion of the Applied Income less deduction for "*Personal Needs Allowances*" of \$50.00, the same, granted pursuant to Article 5, N.Y. Social Services Law, § 131.o(b), directly to the Defendant's facility (42 U.S.C. §1396a (10), 1396d(a)(4)A), and 1396r).

## POINT II

*Victim of Nursing Home Elderly financial abuse, constitute a "Special Circumstances."*

---

22. The Plaintiff, LEONARD W. HOUSTON, as sole Beneficiary of the Estate of LOUIS HOUSTON, SR., realleges and incorporated by reference Paragraphs numbered "1" through 21," as if fully stated herein.

23. That on or about September 8, 1997, the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") through its agents, employees and those acting in consort, herein an alleges, that they imposed an unlawful lien and execution thereof, against said Decedent's monthly "*Personal Needs Allowance*" of \$50.00, which was granted under Article 5, N.Y. Social Service Law §131-o1(b).

15. That, upon information and belief, and herein alleges, on or about April 23, 1997, the Defendant, HIGHLAND CARE CENTER, INC, ("The Facility") through its agents, employees, and those acting in consort, did sought and secured a financial guarantee by a form of deceit, pursuant to the admission of the decedent, LOUIS HOUSTON, SR., at its facility.

16. That, upon information and belief, and herein alleges, that said form of deceit by the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") was to "double-bill" and to force member(s) under duress to make a separate payment(s) for an item(s) or service(s) already covered by the Medicaid *per-diem* rate, in violation of the federal law prohibiting Nursing Facility Guarantees.

17. That, upon information and belief, and herein alleges, that the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") has been banned from such action that a "nursing facility must require a third-party guarantee of payment as a condition of admission, or in this case, expedited admission in its facility," pursuant to Medicare-Medicaid Anti-fraud and Abuse Amendments of 1977 (42 U.S.C. § 1320a-7b(d)).

18. That the action and conduct of Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") upon information and belief, and herein alleges, being certified for participation in both the Medicare and Medicaid programs, did in fact, required a Resident's family member under deceit and duress to become financially responsible for nursing facility expenses in violation of the Nursing Home Reform Amendments Act, as contained within the Omnibus Budget Reconciliation Act of 1987 [Pub. L. No. 100-203, 101 Statue 1330] 42 U.S.C. § 1395i-3(a)(h) and 1396r(a)-(h) 42 U.S.C. § 13951-3(c)(5)(A)(ii); 42 C.F.R. 483.12(d)(2)].

19. That the Admission Agreement of the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility"), which contained *inter alia*, a "Responsibility Party" provision is clearly in violation of the previously mentioned cited federal statutes.

20. That said agreement of the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") is void and unenforceable for at least five (5) reasons, namely:

1. can be used by a nursing facility to force a Resident's family member or friend into becoming a guarantor;
2. provides no consideration to a Resident, family member, or friend;
3. imposes unconscionable terms;
4. violates public policy; and
5. violates applicable consumer federal and state protections statutes.

21. The decedent, LOUIS HOUSTON, SR., is indigent, and that the Medicaid program makes and/or supplements the Resident's payment (i.e., that portion of the Applied Income less deduction for "Personal Needs Allowances" of \$50.00, the same, granted pursuant to Article 5, N.Y. Social Services Law, § 131.o(b), directly to the Defendant's facility (42 U.S.C. §1396a (10), 1396d(a)(4)A), and 1396r).

## POINT II

*Victim of Nursing Home Elderly financial abuse, constitute a "Special Circumstances."*

---

22. The Plaintiff, LEONARD W. HOUSTON, as sole Beneficiary of the Estate of LOUIS HOUSTON, SR., realleges and incorporated by reference Paragraphs numbered "1" through 21," as if fully stated herein.

23. That on or about September 8, 1997, the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") through its agents, employees and those acting in consort, herein an alleges, that they imposed an unlawful lien and execution thereof, against said Decedent's monthly "Personal Needs Allowance" of \$50.00, which was granted under Article 5, N.Y. Social Service Law §131-o1(b).

24. That sad unlawful lien and execution thereof, was on account of previous medical assistance rendered at its facility to said Decedent, under the Medicare/Medicaid plans, being in violation of *inter alia*, Social Security Act, as amended (42 U.S.C. §1396p(a)).

25. That the Decedent, LOUIS HOUSTON, SR., had not given any "express" or "implied" consensual arrangement(s), that his "Applied Income" *i.e.*, being more specifically herein, his "*Personal Needs Allowance*" of \$50.00, as therein determined to and pursuant to the Article 5, N.Y. Social Service Law §131-o<sup>1</sup>(b), to be levy with execution thereof. And/or recovery to satisfy any alleged un-reimbursement for nursing home expenses, and thus said Decedent, lack of recourse to recover said financial abuse.

26. That the imposition of such lien or any other form of lien, may not be imposed against the property of the Decedent, LOUIS HOUSTON, SR., *prior* to his death on account of medical assistance paid on his behalf under the State plan.

27. That the unlawful action and conduct of Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") by and through its agents, employees, and those acting in consort, and such being deemed as a form of "*financial abuse*" in violation of state law (Article 5, New York Social Services Law § 131-0.9(a), and 1378-137a, as amended).

28. Thereby, and as a result thereof, the Decedent, LOUIS HOUSTON, SR., to suffer physical and intentional infliction of emotional distress, paid and psychological anguish; thus, diminishing his basic dignity and security afforded to him under the aforesaid Medicare and Medicaid programs, and pursuant to Title II of the federal Social Security Act, as amended (42 U.S.C. § 401, et seq.). and thus, denied his Civil Rights under Title 42 U.S.C. § 1983, and 14<sup>th</sup> Amendment of the Constitution of the United States.

29. That the actions and conduct of Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") upon information and belief, herein alleges, as aforesaid above, being deemed as a form of abuse, and in violation of the receipted document entitled, "Residents' Bill of Rights-Nursing Homes And Health Related Facilities (42 U.S.C. §1396r; N.Y. Public Health Law §2803c (3)a-h, as amended; State Hospital Code §§ 730.17, 740.14, and more specially § 730.17 (12):

*"... is treated with consideration, respect and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs."*

Annexed herewith, a document of said "Resident's Rights" as was thereafter received then by LEONARD W. HOUSTON, sole Beneficiary of Estate of LOUIS HOUSTON, SR., upon his subsequent admission to the skilled healthcare facility of Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") and made a part of this Complaint. Annexed Exhibit A.

30. That Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") has failed and/or refused to comply with a national law that states, *inter alia*:

*"... each resident must receive and each facility must provide the necessary care and services to obtain or maintain the highest practicable physical, mental, and psycho-social well-being."*

Thereby, recognizing the vulnerability of nursing home residents coupled with the broad variances in standards of resident care, the Legislature adopted a bill of rights for all nursing home residents, and was declared to be the public policy of the State of New York and requires nursing homes to treat residents in accordance with its terms, and the same has been expanded in a regulation of the New York Department of Health (10 NYCRR § 415.3) (Pub. Health L. 2803-c) (See 42 C.F.R. § 483.25, 42 U.S.C. § 1396r (a), 42 C.F.R. § 440.150.)

30. That Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") has failed and/or refused to comply with a national law that states, *inter alia*:

*"... each resident must receive and each facility must provide the necessary care and services to obtain or maintain the highest practicable physical, mental, and psycho-social well-being."*

Thereby, recognizing the vulnerability of nursing home residents coupled with the broad variances in standards of resident care, the Legislature adopted a bill of rights for all nursing home residents, and was declared to be the public policy of the State of New York and requires nursing homes to treat residents in accordance with its terms, and the same has been expanded in a regulation of the New York Department of Health (10 NYCRR § 415.3) (Pub. Health L. 2803-c)

*(See 42 C.F.R. § 483.25, 42 U.S.C. § 1396r (a), 42 C.F.R. § 440.150.)*

**POINT III**  
*Elder Financial Abuse of Fiduciary Funds*

---

31. The Plaintiff, LEONRD W. HOUSTON, as sole Beneficiary of Estate of LOUIS HOUSTON, SR., realleges and incorporated by reference Paragraphs numbered "22" through "30," as if fully stated herein.

32. That Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") through its agents, employees, and those acting in consort, upon information and belief, and alleges herein, failed and refuse to give written request made by the decedent, LOUIS HOUSTON, SR., also to his designated and named Representative a written Quarterly Accounting of Financial Transaction therein entitled, "**RESIDENT FUNDS STATEFMENT**"), that had been made on his behalf, since his admission to its facility, on or about April 21, 1997. As statutorily required under the **Resident's Rights** (42 C.F.R. § 483.12, et seq., and pursuant to Article 28, Public Health Law § 2803-c (d), as amended, and the State Hospital Code § 730.17(9).

33. Thus, the Decedent's rights have been violated under the established requirements for the protection and management of personal funds (42 U.S.C. §1395i-3(c) (6); 42 U.S.C. §1369r (6).

**POINT IV**  
*Forms of Intentional Wrongdoing*

---

34. The Plaintiff, LEONARD W. HOUSTON, as sole Beneficiary of Estate of LOUIS HOUSTON, SR., realleges and incorporated by reference Paragraphs numbered "31" through "33," as fully stated herein.

35. The unlawful conduct and actions of Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") by its agents, employees, and those acting in consort, as aforesaid above, upon information and belief, and herein alleges, deprived the Decedent, LOUIS HOUSTON, SR., of his rights, privileges, and immunities secured to him by the Constitution of the United States:

- (a) . . . the right of said plaintiff not to be deprived of property without "*due process*" of law, and in addition
- (b) the right to equal protection of the laws secured by the 14<sup>th</sup> Amendment of the Constitution of the United States, and 42 U.S.C. §1983., as amended.

**POINT V**  
*Failure to protect from health and safety standards.*

---

36. The Plaintiff, LEONARD W. HOUSTON, as sole Beneficiary of Estate of LOUIS HOUSTON, SR., realleges and incorporated by reference Paragraphs numbered "34" through "35," as if fully stated herein.

37. That the Plaintiff, LEONARD W. HOUSTON, as sole Beneficiary of the Estate of LOUIS HOUSTON, SR., is reliably informed and believes, and there4on alleges that the Defendant, HIGHLAND CARE CENTER, INC., ("the Facility") frequently violated nursing home standards resulting in actual health deficiencies, as enforce by the Health Care Financing Administration ("HCFA"). (42 C.F.R. § 483 (a)- (c).

38. Accordingly, the Social Security Act, §1864(a), authorizes the Secretary of the Department of Health and Human Services to enter into agreements with state survey agencies to determine whether skilled nursing facilities (i.e., HIGHLAND CARE CENTER, INC., ("the Facility") met the federal participation requirements, and in the Medicaid program pursuant to § 1902 (a)(33)(B) of the Social Security Act.

39. That the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") by its agents and employees, upon information and belief, and herein alleges, that they failed to establish and maintain an adequate infection control program to help prevent the development and transmission of diseases and infection to its residents/patients at its facility, that as a result, upon information and belief, herein alleges, subsequently developed *inter alia*, forms of bacterial pneumonia.

40. That on or about September 9, 1998, the Decedent, LOUIS HOUSTON, SR., was admitted to Parkway Hospital, located at 70-35 113th Street, Forest Hills, New York 11375, with a true condition and ailment, being there4in diagnosed by his attending Physician, Zenaida E. Santos, as determined as "Pneumonia" because of a bacterial infection, and upon information and belief, and herein alleges, attributed to said Defendant's facility uncleanliness's environment, thereby in violation of the nursing home standards, resulting, *inter alia*, in actual health deficiencies- failed to comply with the required standards (42 U.S.C. §1395x(j)).

41. That Decedent, LOUIS HOUSTON, SR., is without any fault or negligence on his part, or in any way contributed thereto said "bacterial infection" "and being absent of the fact that the *pneumonia* Germs was/were already present in said Decedent's body.

42. That the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility"), its agents, and employees, upon information and belief, and herein alleges, was/were negligent for exposing the Decedent, LOUIS HOUSTON, SR., to extraneous infection and/or other bacterial pathogens; failure to otherwise exercise due and reasonable care in the treatment, care and convalescence of said decedent; thus ignored the symptoms attributed to *pneumonia*, and complaints of said named Decedent, until he became ill, and hospitalization was required.

43. That the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility"), by its agents, and employees, upon information and belief, and herein alleges, is/was negligent in not providing housekeeping and maintenance services necessary to maintain sanitary, orderly, and comfortable interior for its residents/patients at its facility, to prevent violations of nursing home standards that would result in actual health deficiencies.

44. That the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility"), upon information and belief, and herein alleges, failed to furnish the Decedent, LOUIS HOUSTON, SR, resident physician, interns, nurses and other personnel qualified by education, training and experience to meet the standards of medical care and treatment required by said named Decedent; and upon information and belief, and herein alleges, negligent and carelessness in the exposure of serious forms of infectious diseases.

45. That the previously mentioned hospitalization of the Decedent, LOUIS HOUSTON, SR., from September 9, 1998, to September 28, 1998, upon information and belief, and herein alleges, that the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") by its agents and employees by intentional failure to maintain adequate infection control program to help prevent the development and transmission of disease(s) and infection(s) to its residents/patients at its facility, being purported to be a "Skilled Nursing Facility" for long term care; and that said Defendant has violated the nursing home standards under the current Medicare and Medicaid programs as clearly set forth by federal statutes (42 U.S.C § 1395i-3(d); 42 U.S.C. §1396r d); and 42 C.F.R. *part* 483).

#### **POINT VI**

*Violation of the Health Care Financing Administration laws.*

---

46. The Plaintiff, LEONARD W. HOUSTON, as sole Beneficiary of Estate of LOUIS HOUSTON, SR., realleges and incorporated by reference Paragraphs numbered "36" through "45," as if fully stated herein.

47. That the Plaintiff, LEONARD W. HOUSTON, ass sole Beneficiary of the Estate of LOUIS HOUSTON, SR., is/was reliably informed and believes, and thereon alleges that the Defendant, HIGHLAND CARE DENTER, INC. ("the Facility") frequently violated nursing home standards resulting in actual health deficiencies, as enforced by the Health Care Financing Administration ("HCFA") under federal statutes (42 C.F.R. 483(a)-(c). Annexed copy of **Subpart B**, **Part 483 – Conditions of Participation and Requirements for Long Term Care Facilities** (42 C.F.R. parts 483 & 484), as Attachment 2

48. That the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") by its agents and employees, upon information and belief, and herein alleges, fail to establish and maintain adequate infection control program(s) to help prevent the development and transmission of diseases and infections to its resident/patients at its facility, that as a result, and subsequently developed *inter alia*, forms of bacterial pneumonia.

49. That, prior to the above aforesaid date (September 9, 1998), on or about May 16, 1997, the Decedent, LOUIS HOUSTON, SR., was admitted to Parkway Hospital, located at 70-35 113th Street, Forest Hills, New York 11375, with a true condition and ailment, diagnosed by his attending Physician, Zenaida E. Santos, M.D., as "*Pneumonia*" as a result of a bacterial infection; and upon information and belief, attributed to the Defendant's facility uncleanliness environment, thirty in violation of the nursing home standards, resulting in actual health deficiencies, thus failed to comply with standards set forth under the federal statutes (42 U.S.C. § 1395x(j)).

50. That the Decedent, LOUIS HOUSTON, SR., is without any fault or negligence on his part, or in any way contributed thereto said bacterial infection, and being absent of the fact that the *Pneumonia* germs had already been present in the Decedent's body.

51. That the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility"), by its agents, and employees, and upon information and belief, and herein alleges, was/were for exposing the Decedent, LOUIS HOUSTON, SR., to extraneous infection and/or bacterial pathogens; failed to otherwise exercise due and reasonable care in the treatment, care and convalescence of said Decedent, ignored the symptoms attributed to *pneumonia*, and complaints of said Decedent, until he became acutely ill, and hospitalization was then required.

52. That the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") by its agents, and employees upon information and belief, and herein alleges, was/were negligent in not providing housekeeping and maintenance services necessary to maintain sanitary, orderly and comfortable interior for its resident/patients at its facility, to prevent violations of nursing home standards that would result in actual health deficiencies.

53. That the Defendant, HIGHLAND CARE CENTER, INC., ("the Facility") had failed to furnish the Decedent, LOUIS HOUSTON, SR., resident physicians, interns, nurses and other personnel qualified by education, training and experience to meet the standard of medical care and treatment required by said Decedent and negligent and careless in the exposure of various forms of infectious diseases.

54. That the hospitalization of the Decedent, LOUIS HOUSTON, SR., from May 16, 1997 to May 23, 1997, upon information and belief, and herein alleges, was caused by the Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") by its agents and employees' intentional failure to maintain adequate infection control program(s) to help prevent the development and transmission of diseases and infection to its residents/patients at its facility, purported to be a "Skilled Nursing Facility" for long term care; and upon information and belief, and herein alleges, that said Defendant has violated the nursing home standards under the current Medicare and Medicaid programs as clearly set forth under federal statutes (42 U.S.C. § 1395i-3(d). 42 U.S.C. § 1396r) (d); and 42 C.F.R. *part* 483).

## POINT VII

*The Decedent's neglected and abused of the **Skilled Nursing Facility**, herein entitled the sole Beneficiary of the Estate of LOUIS HOUSTON, SR. of significant financial compensation.*

---

55. The Plaintiff, LEONARD W. HOUSTON. As the sole Beneficiary of Estate of LOUIS HOUSTON, SR., realleges and incorporated by reference Paragraphs numbers "46" through "54." Fully stated herein.

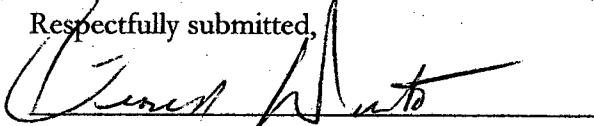
56. That the unlawful acts of deprivation of rights, unlawful conduct, neglect, and abuse behavior (*both* medically and financially) of Defendant, HIGHLAND CARE CENTER, INC. ("the Facility") by its agents, employees, and those acting in consort was clearly performed in fact, knowing, intentionally, and maliciously, by reason of, which the Decedent, LOUIS HOUSTON, SR., being therein aggrieved by the aforesaid federal and state statutory violations, his estate is entitled to an award of punitive damages has herein for the above enumerated for redress of those deprivations which had continued from April 21, 1997 to his death – January 19, 2000, thus, herein by this "Complaint"- LEONARD W. HOUSTON, sole Beneficiary of Estate of LOUIS HOUSTON, SR., *Decedent*, constituted "special circumstances" which has clear the institutional abuse of the elderly in health care facilities – HIGHLAND CARE CENTER, INC. ("the Facility"), the same, being a license/registered "Skilled Nursing Home,

## CONCLUSION

**WHEREFORE**, the Plaintiff, LEONARD W. HOUSTON, as sole Beneficiary of Estate of LOUIS HOUSTON, SR., Deceased, respectfully request that this Court advance this case of medical neglect, physical abuse, and elder financial/fiduciary abuse of "Resident Patient," that constitutes a "special circumstance" that conferred said Decedent's Estate Beneficiary with standing to seek redress on the behalf of the estate.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
**LEONARD W. HOUSTON,**  
Beneficiary of the Estate of Louis Houston, Sr.,  
Decedent, Pro-se  
*Petitioner,*

Dated: July 22, 2024